

**LEMON GROVE CITY COUNCIL**  
**AGENDA ITEM SUMMARY**

**Item No.** 3  
**Mtg. Date** July 17, 2018  
**Dept.** Development Services Department

**Item Title:** Separation Findings for Discretionary Permits

**Staff Contact:** David De Vries, Development Services Director

**Recommendation:**

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| Discuss and advise on the alternatives for separation findings for discretionary permits. |
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**Item Summary:**

For discretionary permits for large family daycares, medical marijuana dispensaries (MMDs), beekeeping, alcoholic beverage related businesses requiring a conditional use permit and adult entertainment uses, the land use cannot be established unless it is separated from specifically listed land uses. A separation finding is required to be made by the decision body at the time of final decision. At the April 17, 2018 City Council meeting, the City Council directed staff to present alternatives for making separation findings prior to final decision by the Development Services Director, Planning Commission and City Council. This may allow an applicant to obtain the required separation finding prior to preparing costly plans and reports and prior to final decision. Land uses established after this finding is made would not restrict an applicant from obtaining a permit. The staff report (**Attachment A**) provides alternatives for Council's consideration.

**Fiscal Impact:**

Unknown at this time.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review                 | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section <u>          </u> | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report
- B. Lemon Grove Municipal Code Excerpts



## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 3

Mtg. Date July 17, 2018

Item Title: Separation Findings for Discretionary Permits

Staff Contact: David De Vries, Development Services Director

### Background

At the April 17, 2018 City Council meeting, the City Council directed staff to present alternatives for making separation findings prior to final decision by the Development Services Director, Planning Commission and City Council.

The following background and discussion provides a general overview of applicable separation regulations in the Lemon Grove Municipal Code (LGMC) and a comparison of alternatives for early separation findings. It also describes noticing and permit requirements and alternatives for early separation findings.

### *Regulatory Background*

The LGMC requires separation findings be made for large family daycares, medical marijuana dispensaries (MMDs), beekeeping, alcoholic beverage related businesses requiring a conditional use permit and adult entertainment uses as follows:

1. Large Family Daycares (LGMC Section 17.24.060(D)(3) Accessory buildings and uses - Daycares):
  - a. A facility shall not be established within one thousand feet of another such facility.
  - b. Requires a minor use permit conditionally approved by the Development Services Director with a \$500.00 deposit.
2. Medical Marijuana Dispensaries (LGMC Chapter 17.32 Medical Marijuana Regulations):
  - a. MMDs shall be 1,000 feet from regulated and protected uses inside and outside city limits. Regulated uses include MMDs and protected uses include public parks, playgrounds, licensed day care facilities, schools and alcohol and substance abuse treatment centers. The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.
  - b. Requires a zoning clearance and \$1,090.00 fee to review and approve separation requirements and application materials and requires a conditional use permit with City Council conditional approval and \$1,500.00 deposit.

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3. Beekeeping (LGMC Section 18.16.060 Exotic animals and beekeeping):
  - a. Up to four beehives may be permitted. Beehives shall be placed at least twenty-five feet from the exterior line of the traveled way of any public streets, at least twenty-five feet from the exterior line of any private access easement, at least fifteen feet from any side or rear lot line, and at least twenty-five feet from neighboring dwellings.
  - b. For three to four hives, a one-hundred-foot separation from neighboring dwellings is required.
  - c. Beehives shall be placed at least one hundred feet from the border of sensitive areas. Sensitive areas include areas where people, such as the elderly, small children, individuals with medical conditions or confined animals inhabit or frequent that are more at risk if stinging incidents were to occur. Sensitive areas are characterized by a demonstrated need for a greater safety buffer. These areas include, but are not limited to, schools, playgrounds, picnic areas, outdoor sports facilities, daycare centers, senior care facilities, medical facilities, and animal-boarding facilities. Property operators, owners, or residents who have medical reasons may apply to have their locations designated as sensitive sites. Businesses and facilities with employees who have medical reasons or where bees could cause a nuisance during normal work activities may also apply to have their locations designated as sensitive sites. The development services director may approve sites or remove sites previously approved or designated as sensitive sites upon request. Upon appeal, the city council has final discretion to approve designation of locations as sensitive sites upon review of supportive documentation.
  - d. Requires a beekeeping permit with \$35.00 fee similar to a Zoning Clearance approved by the Development Services Director.
4. Alcoholic Beverage related Businesses Requiring a Conditional Use Permit including Convenience Markets, Bars, Nightclubs and Liquor Stores (LGMC Chapter 18.27 – Alcoholic Beverage Sales):
  - a. Businesses engaged in the sale or distribution of alcoholic beverages for off-site consumption shall maintain a minimum separation of 500 feet from any other business required to have a conditional use permit for the sale of alcoholic beverages. This subdivision shall not apply to incidental alcoholic beverage sales and warehouses, and distribution facilities.
  - b. Businesses engaged in the sale or service of alcoholic beverages for on-site consumption shall maintain a minimum separation of 1,000 feet from another business selling or serving alcoholic beverages requiring a conditional use permit for on-site consumption and a minimum of 500 feet from any other business requiring a conditional use permit for the on-site or off-site sale or service of alcoholic beverages; any church or other place of worship; any public or private preschool, elementary school or high school; any public park or playground; any hospital, clinic, or other health care facility; any residential unit other than a caretaker's dwelling on a commercial or industrial property; and any property zoned for residential use. Based upon the particular circumstances involved, the

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city council shall determine the appropriate separation between private clubs and lodges operated by recognized national, state or regional religious or fraternal order and appropriate distances between such clubs and lodges and other types of land use.

- c. Requires a conditional use permit with City Council conditional approval and \$1,500.00 deposit.
- 5. Adult Entertainment including (LGMC Chapter 18.28 – Adult Entertainment):
  - a. Adult entertainment establishments include adult arcade, adult bookstore, adult cabaret, adult drive-in theater, adult mini-motion picture theater, adult model studio, adult motel, adult motion picture theater, adult theater, body painting studio, sexual encounter establishment and any other business which involves specified sexual activities or the display of specified anatomical areas. No adult entertainment establishment shall be permitted within 1,000 feet of another such business, within five hundred feet of any area zoned for residential use, or within six hundred feet of any church, school, public playground, park or recreational area.
  - b. Adult entertainment establishments are currently prohibited in all zones, but were previously allowed in the General Commercial zone.

Decisions of the Development Services Director can be appealed to the Planning Commission and decisions of the Planning Commission can be appealed to the City Council.

### Discussion

The land uses subject to separation requirements cannot be established unless it is separated from specifically listed land uses as described above. Current LGMC regulations require a separation finding to be made by the decision body at the time of final decision. This requires an applicant to prepare all necessary plans and studies with staff approval prior to obtaining a final decision.

The City Council may consider a variety of alternatives for making separation findings including, but not limited to:

1. At time of initial notice of complete or incomplete and within 30 day of initial application submittal.
2. At time of application being deemed complete which requires all architectural and engineering drawings and required reports and studies to be complete and approved by City staff.
3. At time of conditional approval by the Development Services Director, Planning Commission or City Council.
4. As a part of a separate zoning clearance, minor use permit or conditional use permit for the specific purpose of making an early separation finding. A zoning clearance would include no public noticing with appeal rights by the applicant. A minor use permit would require a 500 foot radius public notice to property owners with conditional approval by the Development Services Director and appeal rights by the applicant and any member of the public. A conditional use permit would require a 500 foot radius public notice to

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property owners, a sign posted on the property and conditional approval by the Planning Commission and appeal rights by the applicant and any member of the public.

The Development Services Director inquired to all California jurisdictions through an email listserve for related sample ordinances. Only the City of Simi Valley responded who allows the separation finding to be made after a project application has been deemed complete. The project will not be subjected to any further application of the distance requirements. Any conflicting use, such as a church, hospital, or school, which commences after the CUP application is "deemed complete" date, does not affect the establishment. Most other jurisdictions make this finding at the time of conditional approval by the Development Services Director, Planning Commission or City Council.

An important factor to consider is public noticing. For MMDs, the daycare lists are only requested once per year due to the approximate \$500 request cost charged by the State daycare licensing division. Small family daycares which are protected uses in accordance with LGMC Chapter 17.32 (Measure V) do not require any permit or business license from the City and their location will not be known unless the list is requested by the City at the requested cost. The LGMC requires a 500 foot public notice to property owners, not renters, radius notice for public notifications associated with minor use permits, conditional uses permits, planned development permits, tentative maps and tentative subdivision maps. Measure V requires that a MMD shall not be established within 1,000 feet of protected uses like daycares. If an early finding option could be made, the City Council could require public noticing to reflect the same distance as the separation requirement to give all effected properties an opportunity to appeal the decision or attend the public hearing. Also, a sign could be required to be posted on the property for a specific duration (e.g., 30 days) prior to the early finding being made. A public notice in the East County Californian could also be required.

Staff's primary concern with any alternative is public noticing. To ensure appropriate noticing, staff recommends that the minor use permit be required which will allow for a 500 foot radius notice to property owners. Staff also recommends that the "sign posted on property" requirement be codified for all discretionary permits including minor use permits, conditional uses permits, planned development permits, tentative maps and tentative subdivision maps. This will ensure appropriate public noticing is provided for early findings and allows members of the public to appeal to the Planning Commission and further to the City Council.

## **Conclusion:**

Staff recommends that the City Council discuss the contents of this report and provide comments to staff in preparation for an ordinance affecting when the separation finding is made and the public noticing required.

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### **LGMC Section 17.24.060(D)(3) - Accessory Buildings and Uses**

3. Day Care. A facility licensed and equipped as required by law, which provides nonmedical care or supervision for periods of less than twenty-four hours, is allowed as follows:
  - a. Small family day care is permitted in single-family dwellings in all residential zones according to the following standards:
    - i. Day care is provided in a single-family dwelling for one to eight people, depending on ages, including children under the age of ten residing in the home.
    - ii. The day care provider shall reside in the home.
  - b. Large family day care is permitted in single-family dwellings in the RL, RL/M and RM zones according to the following standards:
    - i. Day care is provided in a single-family dwelling for up to fourteen people, depending on ages, including children under the age of ten residing in the home.
    - ii. The day care provider shall reside in the home.
    - iii. Obtain a minor use permit according to Section 17.28.050.
    - iv. Play areas shall be situated in such a manner as to minimize the impact of noise on surrounding properties. The development services director may require the installation of six-foot high masonry walls, landscaping, and/or other noise attenuating devices.
    - v. Adequate street capacity and an area sufficient for dropping off and picking up persons shall be provided to the satisfaction of the development services director and the public works director in a manner consistent with traffic safety requirements.
    - vi. A facility shall not be established within one thousand feet of another such facility. The distance between any two large family day cares shall be measured in a straight line, without regard to intervening properties or structures, from the closest exterior wall of each dwelling.
    - vii. Additional conditions shall be limited to reasonable traffic, parking, and noise control and compliance with the development standards of the zoning district.

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## LGMC Chapter 17.32 – Medical Marijuana Regulations

### 17.32.010. Purpose.

This Chapter establishes the regulations for the use of *medical marijuana*, to the extent allowed by State

Law, in a way that will minimize the impacts on the community and help pay for costs associated with the usage of a controlled substance. This Ordinance does not authorize or permit any conduct not allowed by state law.

### 17.32.020. Applicability.

A. The intent of this section is to regulate the cultivation, processing and dispensing of *medical marijuana* in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a *qualified patient* or *Primary caregiver's* right to *Medical marijuana*, as provided for in California Health & Safety Code Section 11362, nor criminalize the same.

B. *Medical marijuana* for personal use shall be in conformance with the standards set forth in this Title.

**17.32.030. Release of Liability and Hold Harmless.** The owner and permittee of a *Medical Marijuana Dispensary* or cultivation facility shall release the City of Lemon Grove, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, *Primary caregiver* or *Qualified patients* for violation of state or federal laws in a form satisfactory to the Director of Development Services. In addition, the business owner and permittee of each *Medical marijuana* cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Lemon Grove and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their *Qualified patients* for problems, injuries, damages, or liabilities of any kind that may arise from the distribution, cultivation and/or on- or off-site use of *Medical marijuana* provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director of Development Services.

**17.32.040. Application.** *Medical marijuana Dispensary* which dispense, process and cultivate medicinal marijuana shall be required to obtain a Conditional Use Permit consistent with 17.28.050 prior to operation. The fact that an applicant possesses other types of state or City permits or Licenses does not exempt the applicant from the requirement of obtaining a Conditional Use Permit to operate a *Medical marijuana Dispensary*.

**17.32.050. Definitions.** The following words and phrases are italicized throughout this title and shall have the meanings found in this section.

"Director" means a corporate officer, corporate board member, or employee with supervisory responsibilities of an authorized *Dispensary* business that dispenses *medical marijuana*.

"Licensed Physician" means a person educated, clinically experienced, and licensed by the Medical Board of California, or the Osteopathic Medical Board of California to practice medicine.

"Medical Marijuana" means marijuana product used for the treatment of pain and suffering caused by diseases and ailments. *Medical marijuana* does not include recreational use.

"Medical Marijuana Dispensary" (*Dispensary*) means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, as defined by Section 19300.5 of the California Business and Professions Code.

"Medical Marijuana Identification Card" (*MMIC*) A document provided by the San Diego County *Medical Marijuana Identification Card (MMIC)* Program pursuant to the State Department of Health Services that identifies a *Qualified patient* authorized to engage in the medical use of marijuana and the person's designated *Primary caregiver*, if any as per California Health and Safety Code §11362.7, and as may be amended.



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"Operations Manual" a manual that each *Dispensary* shall develop, implement and maintain on the *Premises* which contains requirements outlined in Section 17.32.090.C.6.

"Person with an Identification Card" means an individual who is a *Qualified patient* who has applied for and received a valid identification card pursuant to this article and the California Health and Safety Code §11362.7, and as may be amended.

"Premises" means a lot, parcel, tract or plot of land, together with the buildings, structures and appurtenances thereon.

"Primary caregiver" means the individual or individuals designated by a *qualified patient* who has consistently assumed responsibility for the housing, health or safety of that *qualified patient*. As used herein, a *Primary caregiver* may only grow, administer, transport, or engage in the activities regulated hereunder on behalf of the *qualified patient* for whom they have consistently assumed responsibility for the housing, health or safety of that *qualified patient*. A *primary caregiver* may engage in other activities as specifically enumerated herein.

"Protected Uses" are for purposes of computing distance separations from any public or private preschools and schools, licensed daycare facilities, any park or playground, alcohol and substance abuse treatment centers.

"Qualified patient" means a person who has obtained a written recommendation or approval from a *licensed physician* to use marijuana for personal medical purposes.

"Regulated uses" are for purposes of computing distance separations for *medical marijuana* Cooperative or Collective businesses (with or without accessory cultivation uses) but excluding individual residential cultivation sites operated by *qualified patients* or *primary caregiver* and located solely in Single Family Residential Zones.

### **17.32.060. General Provisions**

The following information must be submitted with an application to request *medical marijuana* use in conformance to this section and the City of Lemon Grove. All documents which relate to the general provisions and the requirements listed in the submittal requirements must be included in the *Operations Manual*.

#### **A. Physician/Patient Confidentiality.**

All processes and reviews conducted pursuant to this Ordinance shall preserve to the maximum extent possible all legal protection and privileges. Disclosure of any member information shall not be deemed a waiver of confidentiality of those records under any provision of state law.

#### **B. Medical marijuana Cultivation Permitted by Compassionate Use Act.**

All cultivation of marijuana for medical purposes shall not be declared unlawful by the City of Lemon Grove when said cultivation is conducted solely for the personal medical purposes of *qualified patients*, in accordance with the Compassionate Use Act of 1996. Such cultivation may include the cultivation and possession of both male and female plants in all stages of growth, clones, seedlings and seeds and related cultivation equipment and supplies. *Qualified patients* and/or their *primary caregivers* may cultivate individually and/or collectively as permitted by the State of California and as outlined in the following sections.

### **17.32.080. Findings**

In addition to the findings required for the granting of a Conditional Use Permit by Section 17.28.050 of this Title, the decision making authority shall consider the following:

- A. Whether the approval of the proposed use will violate the minimum requirements set forth in this chapter for distance separations between establishments which dispense, process or cultivate *Medical marijuana*; and separations between establishments which dispense, process or cultivate *Medical marijuana* and other specific regulated or protected land uses as set forth in this chapter.
- B. Whether the proposed use complies with Title 17 of the Lemon Grove Municipal Code.

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## 17.32.090. Medical marijuana Dispensary Regulations

### A. Zones:

*Dispensaries* may be established by Conditional Use Permit in the Heavy Commercial (HC), Limited Commercial (LC), General Commercial (GC) and Light Industrial (LI) Zones and subject to the distance requirements. *Dispensaries* are prohibited in Mixed-Use Zones (Downtown Village Specific Plan and Central Commercial) and all residential zones (RLM, RL, RM, RMH).

### B. Distance Requirements

An application may be submitted provided the proposed facility meets the required distance measurements. For purposes of measurements, all *Dispensaries* are considered *Regulated uses* and public parks as defined at Section 12.20.030 of Lemon Grove Municipal Code, playgrounds as defined at Section 18.28.020, subdivision (v), of the Lemon Grove Municipal Code, licensed day care facilities as defined at Section 17.08.030 of Lemon Grove Municipal Code, schools as defined at California Health and Safety Code section 11362.768, subdivision (h), and alcohol and substance abuse treatment centers are considered *Protected Uses*. Measurement is made between the closest property lines of the *Premises* in which the *Regulated uses* and *Protected Uses* are located. A regulated use must not be:

1. Within 1000 feet of any other regulated use which is located either inside or outside the jurisdiction of the City,
2. Within 1000 feet from any protected use which is located either inside or outside the jurisdiction of the City.

The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

### C. Standards

1. **Background Check Required for *Directors* and Employees.** The *Director* and employees of a *Dispensary* must obtain a Live Scan background check through the California Department of Justice or the San Diego County Sheriff's Department prior to employment. *Directors* convicted of a serious felony, as defined in California Penal Code section 1192.7, subdivision (c), and Health & Safety Code Section 11359 (Possession for sale) within the previous ten years shall not be eligible for a license. Other potential collective employees and volunteers convicted of the crimes identified in this section in the previous five years are ineligible for employment or participation. If during employment with the *Dispensary*, a *Director* or employee is convicted of a crime identified in this section shall be immediately dismissed from employment or required to resign as a corporate board member or officer. For purposes of this section, a conviction in another state that would have been a conviction equivalent under California law to those convictions specified in this section will disqualify the person from employment or volunteering at the *Dispensary*.
2. **Security Personnel Required.** *Dispensaries* shall have at least one uniformed security guard on duty during operating hours that possess a valid Department of Consumer Affairs "Security Guard Card."
3. **Community Relations Liaison Required.** *Dispensaries* shall designate a community relations liaison (liaison) who shall be at least 18 years of age. The liaison may also be the *Director* of the *Dispensary*. To address community complaints or operational problems with the *Dispensaries*, the individual designated as the community relations liaison shall provide his or her name, phone number and email address to the following:
  - a. Lemon Grove City Manager,
  - b. San Diego County Sheriff's Department personnel supervising law enforcement activity in Lemon Grove

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- c. All neighbors within one hundred feet of the *Dispensary*.
4. **Inspection of *Premises*.** City Code Enforcement Officers, San Diego Sheriff's Department staff, and any other employee of the City requesting admission for the purpose of determining compliance with the standards set forth in this section shall be given access to the premise. City and Sheriff Staff shall not retain information pertaining to individual patient records viewed during an inspection, and information related to individual patients shall not be made public. Inspectors will give reasonable notice of a scheduled inspection. Unannounced inspections of a *Dispensary* may occur if City or Sheriff Department staff have probable cause that the collective is violating the law.
5. **Inspection Requirements.** In order to facilitate verification that a *Dispensary* operates pursuant to State and local laws, the following records must be maintained at the *Premises* at all times and available for inspection by City Code Enforcement Officers, San Diego Sheriff's Department staff, and any other employee of the City:
- a. Client Records - The *Dispensary* shall keep a record of its clients. The record shall include the following and shall be maintained for a two-year period:
- i. *Qualified patient* member's name, name of *primary caregiver* when appropriate, and name of *Licensed Physician* recommending use of *medical marijuana* for the member.
- b. *Medical Marijuana* Records - *Dispensary* shall keep a record of its *medical marijuana* transactions. The following records shall be maintained for a two-year period and labeling shall occur as specified:
- i. A record identifying the source or sources of all *Medical marijuana* currently on the *Premises* or that has been on the *Premises* during the two-year period preceding the current date. The record shall include the name of the cultivator or manufacturer and the address of the cultivation or manufacturing location.
- ii. All *Medical marijuana* at the *Premises* must at all times be physically labeled with information that will allow for identification of the source of the *Medical marijuana*.
- iii. All *Medical marijuana* at the *Premises* shall be physically labeled with the monetary amount to be charged.
- c. Financial Records - *Dispensary* shall maintain records of all transactions involving money and/or *Medical marijuana* occurring at the *Premises*. Records shall be maintained for a two-year period preceding the current date.
- d. Employee Records - *Dispensary* shall maintain a record of each employee/volunteer and *Director*. The record shall include name and background check verification. Records shall be maintained for a two- year period following the end of an employee's employment or *Director's* relationship with the *Dispensary*.
6. **Operations Manual.** The application for a Conditional Use Permit shall include a detailed *Operations Manual* including but not necessarily limited to the following information:
- a. Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
- b. A description of the staff screening process including appropriate background checks;
- c. The hours and days of the week the *Dispensary* will be open;
- d. Text and graphic materials showing the site, floor plan and facilities of the *Dispensary*. The material shall also show adjacent structures and land use;
- e. A description of the security measures located on the *Premises*, including but not limited to, lighting, alarms, and automatic law enforcement notification;

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- f. A description of the screening, registration and validation process for *qualified patients*;
  - g. A description of *qualified patient* records acquisition and retention procedures;
  - h. The process for tracking *Medical marijuana* quantities and inventory controls employed, including the source of *Medical marijuana* (on-site cultivation, processing, or plant material, or processed products, received from outside sources);
  - i. Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;
  - j. Other information required by the Development Services Director.
- 7. Operating Standards.** *Dispensaries* shall comply with all of the following operating standards. In addition to these standards, the *Dispensaries* shall comply at all times with conditions outlined in the approved Conditional Use Permit and the Operational Manual.
- a. Dispensing *Medical marijuana* to an individual *qualified patient* or *primary caregiver* more than once a day is prohibited;
  - b. *Dispensaries* shall only dispense *Medical marijuana* to an individual *qualified patient* or *primary caregiver* who has a valid, verified *Licensed Physician's* recommendation, and if appropriate, a valid *Primary caregiver* designation. The *Dispensary* shall verify that the *Licensed Physician's* recommendation is current and valid;
  - c. On-site evaluation by a *Licensed Physician* for the purposes of obtaining a *qualified* status is prohibited;
  - d. *Dispensaries* shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the *Dispensary*. The client rules and/or regulations shall include, but are not limited to:
    - i. Each building entrance to a *Dispensary* shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming *Medical marijuana* on the *Premises* or in the vicinity of the *Dispensary* is prohibited unless specifically authorized within the governing Conditional Use Permit.
    - ii. The building entrance to a *Dispensary* shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the *Premises*.
    - iii. The hours of operation for an authorized *Dispensary* shall be limited to between 8:00 a.m. to 8:00 p.m. or as specified within the Conditional Use Permit.
    - iv. *Dispensaries* shall not permit the use or consumption of *medical marijuana* on-site unless specifically authorized under the Conditional Use Permit.
    - v. *Dispensaries* shall not permit the on-site display of unprocessed marijuana plants or representations of marijuana plants in any areas visible to the public;
    - vi. All signage for *Dispensaries* shall require a sign permit from the City prior to installation. Signage shall not include any terminology (including slang) or symbols for marijuana.
    - vii. *Dispensaries* shall only permit the distribution of *medical marijuana* plant material and *medical marijuana* manufactured products from licensed sources as allowed by the approved Conditional Use Permit. Such distribution shall be limited to *qualified patients* or *primary caregiver*;
  - e. *Dispensaries* shall maintain on the *Premises* an on-site training curriculum capable of meeting employee, agents and volunteer training needs. The minimum training curriculum shall include professional conduct, ethics, and state and federal laws regarding patient confidentiality; specific procedural instructions for responding to an

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emergency, including robbery or violent incident.

- f. *Dispensaries* shall maintain all necessary permits, and pay all appropriate taxes. *Dispensaries* shall also provide invoices to cultivators and manufacturers to ensure tax liability responsibility;
  - g. *Dispensaries* shall implement procedures as outlined in their approved *Operations Manual*;
  - h. *Dispensaries* shall submit an "Annual Performance Review Report" for review and approval by the Development Services Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Conditional Use Permit, *Operations Manual*, and Conditions of Approval, as well as any proposed modification to procedures as deemed necessary. The Development Services Director may review and approve amendments to the approved "*Operations Manual*"; and the frequency of the "Annual Performance Review Report." *Medical marijuana* cultivation and dispensing monitoring review fees pursuant to the current Master Fee Schedule shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
  - i. *Dispensaries* shall maintain 24-hour recorded video surveillance of the *Premises*. Recordings shall be retained for 30-days for inspection by City staff. City staff must provide valid cause for viewing video surveillance. City staff must ensure that patient privacy is safeguarded. Video surveillance will not be shared with law enforcement except when formally requested as part of a law enforcement investigation directly involving the *Dispensary*.
  - j. Sales of alcoholic beverages are prohibited.
  - k. Sales of tobacco and tobacco products are prohibited.
  - l. Sales of drug paraphernalia are prohibited.
  - m. The location of the *Dispensary* shall include the installation of a centrally monitored alarm system
  - n. Lighting shall be installed to adequately light the exterior and interior of the *Dispensary Premises* while in conformance with 17.24.080£.2.
8. **Source of Medical Marijuana.** A *Dispensary* shall only dispense marijuana from the following sources and this information shall be included in the *Operations Manual*:
- a. On-site Cultivation for Authorized *dispensary*. If the Conditional Use Permit authorizes limited, on-site *Medical marijuana* cultivation at the *dispensary*, on-site cultivation shall be considered an accessory use and shall not exceed twenty-five (25) percent of the *dispensaries'* total floor area and in no case exceed 1,500 square feet. In addition to these area limitations, the accessory use shall conform to the specific zone regulations, Section 17.24.060 Accessory Buildings and Uses, Section 17.32.100 of this Title, and applicable Building and Fire Codes. The *Operations Manual* shall include information regarding the on-site cultivation including, but not limited to:
    - i. Description of measures taken to minimize or offset energy use from the cultivation or processing of *medical marijuana* on-site; and
    - ii. Description of chemicals stored or used; and
    - iii. Description of any effluent discharged into the City's wastewater and/or stormwater system;
  - a. **Licensed External Source.** Until one year following the date when the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, *Dispensaries* shall source their *medical*

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*marijuana* from cultivators and manufacturers that have obtained a local business license or equivalent document showing that the organization is operating in zoning and regulatory compliance from another jurisdiction for the *Medical marijuana* cultivation or manufacturing. One year from the date that the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, all sources of *medical marijuana* or *medical marijuana* products sold in a *dispensary* must also have a state license for their *medical marijuana* activities.

### 17.32.100. Medical Marijuana Cultivating Regulations.

The cultivation of *medical marijuana* for personal use by a *qualified patient* shall be permitted in connection with a residence owned or leased by a *qualified patient* and meeting the minimum standards noted below.

#### A. Medical Marijuana Cultivation for Personal Use

1. An individual *qualified patient* shall be allowed to cultivate *Medical marijuana* within his/her private residence. If the private residence is leased or rented, a notarized authorization from the property owner must be filed with the City. A *primary caregiver* shall only cultivate *Medical marijuana* at the residence of a *qualified patient* for whom he/she is the *primary caregiver*.
- B. **Zones.** Cultivating *medical marijuana* is allowed in conforming Residential Low (RL) and Residential Medium/Low (RLIM) zones where there is an existing single family development subject to the following standards and authorized by a Zoning Clearance.

#### C. Standards

1. Cultivation shall only occur within an enclosed structure that can be secured and locked including the residence, new or remodeled addition to a residence, residential accessory building or a legally converted garage.
2. Garage conversions shall require a replacement in kind prior to authorizing a cultivation area.
3. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, and shall be ventilated with odor control, and shall not create a humidity or mold problem
4. The *Qualified patient* shall reside in the residence where the *Medical marijuana* cultivation occurs;
5. The interior area dedicated to the cultivation of marijuana in an existing residence or within a proposed addition to the residence shall not exceed 50 square feet.
6. An accessory structure containing a *Medical marijuana* cultivation area shall not exceed 50 square feet and shall be consistent with the accessory structure requirements of the residential zone and Section 17.24.060.
7. *Medical marijuana* cultivation lighting shall not exceed 1200 watts;
8. Evidence of *medical marijuana* cultivation either within or outside the residence shall not be visible from outside the *Premises*.
9. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and shall not be displaced by *Medical marijuana* cultivation.
10. The *medical marijuana* cultivation area shall be in compliance with the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)).
11. The *medical marijuana* personal cultivation and processing shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;

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12. Personal *medical marijuana* cultivation and processing shall not be visible from the exterior of the *Premises*;
13. A *Qualified patient* or *Primary caregiver* shall participate in *Medical marijuana* cultivation in only one residential location within the City of Lemon Grove.

### D. Prohibitions

1. The cultivation of *medical marijuana* shall not be authorized by or considered a Home Occupation and no Home Occupation permit shall be issued.
2. The use of gas products (C02, butane, etc.) for *medical marijuana* cultivation or processing for personal use.
3. Sale or dispensing of *medical marijuana* from a residential zoned property.
4. Signage identifying any uses related to *medical marijuana* in a residential zone.

### E. Deviations

1. Any proposed *medical marijuana* cultivation for personal use by an individual *qualified patient* or *primary caregiver* that does not meet the grow area standard of Section 17.32.090.8 shall require review and approval by the director of Development Services or designee. The proposed deviation from the cultivation area limitations shall be processed as a Zoning Clearance. The director of Development Services or designee shall review the submitted information and make an interpretation of need. A complete application shall include the following documentation:
  - a. *Licensed Physician's* recommendation or verification of more than one *qualified patient* living in the residence shall be submitted with the request showing why the cultivation area standard is not feasible.
  - b. Written permission from the property owner.
  - c. Show conformance to the residential zone and accessory building regulation.
  - d. The Building Official and Fire Chief may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
  - e. *Medical marijuana* cultivation area shall be enclosed in a structure with a 1-hour firewall assembly of green board.
  - f. The *medical marijuana* cultivation area shall not exceed 100 square feet.

#### 17.32.110. Transportation of *Medical Marijuana*.

All activities involving the transportation of marijuana for personal patient use, to the extent permitted by The Compassionate Use Act of 1996, shall be conducted by *Qualified patients* and/or the authorized *Primary caregiver* of the *Qualified patient*, where the quantity transported and the method, timing and distance of the transportation are reasonably related to the medical needs of the *Qualified patient*. All personal transportation shall be conducted in accordance with state law.

All activities involving the transportation of marijuana for a *Dispensary* shall comply with California State Regulations, restrictions and guidelines, as enumerated in Division 8, Chapter 3.5 of the California Business and Professions Code, and established by the Bureau of Medical Marijuana Regulations.

#### 17.32.120. Procedures

##### A. Administrative Citation and Revocation.

1. Any violation of this ordinance occurs the City has the authority to immediately cite a *Dispensary* for the violation. The *Dispensary* is given one warning and if not corrected

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within seven calendar days, the City may issue an administrative citation of \$500 per violation. The citations may escalate according to the schedules identified in Section 1.12.012 until and unless the violations have been corrected.

2. A use permit may be revoked according to Section 17.28.020, subdivision (n) (Revocation of Permits and Approval). Revocation proceedings may occur for non-compliance with the governing Condition Use Permit or Zoning Clearance and any of the standards in this Chapter.
- B. **Transfer of Use Permit.** The rights of an approved Use Permit to operate a *Dispensary* may be transferred to another *Dispensary* as a Use Permit modification according to Section 17.28.020, subdivision (m).
- C. **Appeals.** Any applicant or other interested person may appeal a decision by the Development Services Director according to Section 17.28.0201.
- D. **Fees.** Applications filed under this Ordinance shall be reviewed and processed on a full cost recovery basis pursuant to the current Master Fee Schedule. The City Council may amend the Master Fee Schedule from time to time to ensure for full cost recovery of administration of any Permit issued under this Ordinance.
- E. **Amendments.** Amendments to this Chapter shall conform to the process identified in Section 17.28.080. (Ord. 443 § 1, 2016)



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## 18.16.060 Exotic animals and beekeeping.

A. The keeping of animals considered to be members of a rare and endangered species, exotic or wild animals, including dangerous or poisonous reptiles, shall not be permitted within the city, except as provided in Section 6.04.420 of the Lemon Grove Municipal Code.

B. Beehives may be kept within the residential low and low/medium zoning districts subject to the following:

1. The beekeeper shall apply for a beekeeping permit. The permit application shall be filed on a form available from the development services department and shall be accompanied with a nonrefundable fee as established by resolution of the city council.

2. Up to four beehives may be permitted. Beehives shall be placed at least twenty-five feet from the exterior line of the traveled way of any public streets, at least twenty-five feet from the exterior line of any private access easement, at least fifteen feet from any side or rear lot line, and at least twenty-five feet from neighboring dwellings. For three to four hives, a one-hundred-foot **separation** from neighboring dwellings is required.

3. Beekeepers shall keep sufficient open water available near the beehives during hot and dry weather in compliance with vector control regulations.

4. Beehives shall be well maintained at all times.

5. A beehive shall be no larger than fifteen cubic feet in volume.

6. Only docile bee species may be permitted.

7. Registration with the county of San Diego Department of Agriculture, Weights, and Measures is required prior to beekeeping activities.

8. The following firefighting materials shall be maintained, in good working condition, at all times when the beehive is attended by the keeper, sufficiently near the beehive so as immediately to be available in case of fire:

- a. A shovel; and

- b. Either a fire extinguisher of the two and one-half-gallon water-under-pressure type or the five-gallon back-pump type or its equivalent; or a garden hose connected to a source of water.

9. Beehives shall be placed at least one hundred feet from the border of sensitive areas. Sensitive areas include areas where people, such as the elderly, small children, individuals with medical conditions or confined animals inhabit or frequent that are more at risk if stinging incidents were to occur. Sensitive areas are characterized by a demonstrated need for a greater safety buffer. These areas include, but are not limited to, schools, playgrounds, picnic areas, outdoor sports facilities, daycare centers, senior care facilities, medical facilities, and animal-boarding facilities.

10. Property operators, owners, or residents who have medical reasons may apply to have their locations designated as sensitive sites. Businesses and facilities with employees who have medical reasons or where bees could cause a nuisance during normal work activities may also apply to have their locations designated as sensitive sites. The development services director may approve sites or remove sites previously approved or designated as sensitive sites upon request. Upon appeal, the city council has final discretion to approve designation of locations as sensitive sites upon review of supportive documentation. (Ord. 439 § 2, 2016)

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## LGMC Chapter 18.27 - Alcoholic Beverage Sales

### **18.27.010 Statement of necessity.**

A. The city council finds and determines that the sale and use of alcoholic beverages contributes to problems encountered by residents, businesses, property owners, visitors and workers of the city of Lemon Grove. Documented problems include: (1) debilitating and life-threatening medical conditions such as those related to the dysfunction of the heart and circulatory system, stroke and diseases of the liver; (2) social problems such as child and family neglect and abuse, public drunkenness, and lost productivity; (3) public safety issues relating to drunk driving and related automobile traffic and pedestrian accidents, violence and crime.

B. The city council finds and determines that, without the appropriate regulation, the sale, service and use of alcoholic beverages may adversely and seriously affect the peace, health, safety and welfare of residents of the community and may specifically affect the safety of children and of visitors to the city, may contribute to the deterioration of neighborhoods, cause devaluation of property, erode community values and lower the quality of life.

C. The city council finds that relatively high densities of alcohol outlets are associated with relatively higher rates of related medical disorders, relatively higher rates of social problems and alcohol-related traffic casualties. (Ord. 446 § 2, 2017)

### **18.27.020 Purpose.**

A. To deal with and ameliorate problems and adverse conditions associated with establishments which sell, serve or give away alcoholic beverages by restricting the location of such uses in relation to one another, and their proximity to facilities primarily devoted to use by children and families and the general public, and through the denial of a conditional use permit or through the imposition of conditions on a case-by-case basis, thereby preventing undue concentration and undesirable community impact of such uses, and by the imposition of reasonable conditions upon the operation of all such uses both existing and in the future.

B. To implement the purposes, policies, and programs of the general plan. (Ord. 446 § 2, 2017)

### **18.27.030 Definitions.**

The following words and phrases are specifically defined to apply to the regulations of this chapter. Where words are not defined here or elsewhere in this municipal code, their common meaning shall apply.

A. "Alcoholic beverage" means and includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

B. Alcoholic Beverage Sales, Incidental.

1. Alcoholic beverage sales in restaurants shall be considered incidental if all of the following conditions exist:

- a. Alcoholic beverages are sold for consumption on the premises only;
- b. The primary purpose of the establishment is sit-down dining with table service;
- c. The restaurant contains a fully equipped kitchen, which is utilized each day of business operation for preparation of meals to be served to patrons;
- d. Full food service is available in the restaurant for all hours that the facility, including the bar or cocktail lounge, is open;

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e. Take-out food service, if any, is only incidental to the primary use, sit-down food service;

f. The restaurant offers no drive-up or drive-through service and does not have a take-out window;

g. A separate bar or cocktail lounge may be located on the premises;

h. No alcoholic beverage is served in conjunction with any form of adult entertainment in accordance with Chapter 18.28.

2. Alcoholic beverage sales in food stores other than convenience markets shall be considered incidental when the shelving or display area allocated to alcoholic beverages does not exceed more than ten percent of the total shelf and display area within the store.

3. Alcoholic beverage sales in drug stores with a floor area greater than ten thousand square feet, with or without the sale of household merchandise, beauty supplies, toiletries, and packaged food products, shall be considered incidental when the shelving or display area allocated to alcoholic beverages does not exceed six percent of the total shelf and display area within the store.

4. Brewpubs, wine bars, rectifiers, and alcoholic beverage manufacturers with accessory on- and off-sale alcoholic beverage sales, including, but not limited to, tasting rooms and off-sale alcoholic beverages that are manufactured on-site with catering permitted on-site shall be considered incidental provided performance standards in Section 17.24.080(E) are adhered to.

5. Accessory indoor music and outdoor consumption of alcoholic beverages within a private fenced area shall be considered incidental provided noise regulations within Section 9.24.080(B) are adhered to during the hours between seven p.m. to seven a.m.

C. "Brewpub" means a small primary or accessory beer manufacturer, which may include a restaurant, where the alcohol is produced exclusively at its own premises and sold for on- and/or off-site consumption. This operation allows the sale of other supplier's alcohol for consumption on its own premises.

D. "Convenience markets" means, for purposes of this chapter, any store selling food and household merchandise to the public, which has a floor area less than ten thousand square feet.

E. "Establishment" means a place of business with its furnishings and staff which may be regarded as the smallest unit conveyable by sale, rent or lease.

F. "Notice and order" means the community development director's written notice and order to a business or facility owner or operator which directs such owner or operator to comply with city regulations and the specific requirements of the conditional use permit or zoning clearance authorizing the operation of the business or facility which sells, serves or gives away alcoholic beverages.

G. "Off-sale liquor establishment" means any establishment wherein alcoholic beverages are sold or given away for consumption off the premises, including, but not limited to, any establishment which is applying for or has obtained a liquor license from the California Department of Alcoholic Beverage Control, including types 20 and 21.

H. "On-sale liquor establishment" means any establishment wherein alcoholic beverages are sold, served or given away for consumption on the premises, including, but not limited to, any establishment which is applying for or has obtained a California Department of Alcoholic Beverage Control license types 41, 42, 47, 48, 51, 52 and 63.

I. "Rectifier" means to cut, blend, rectify, mix, flavor and color distilled spirits and wine upon which excise tax has been paid and, whether rectified by the licensee or another person, to package, label, export and sell the products to persons holding licenses authorizing the sale

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of distilled spirits.

J. "Tasting room" means an area used for accessory alcoholic beverage retail consumption on the premises where the alcoholic beverages are produced.

K. "Wine bar" means a small primary or accessory wine beverage manufacturer, which may include a restaurant, where the wine is produced exclusively at its own premises and sold for on- and/or off-site consumption. This operation allows the sale of other supplier's alcohol for consumption on its own premises.

L. Substantial Change in Mode or Character of Operation. Any of the following actions or situations will constitute a "substantial change in mode or character of operation" for purposes of this chapter:

1. The establishment changes its type of retail liquor license within a license classification; or
2. The establishment ceases operation for a period of thirty-one days. The suspension of business during the diligent prosecution of building repairs or remodeling undertaken under the authority of a valid building permit shall not be considered a substantial change in the mode or character of operation if the repairs or remodeling do not change the nature of the licensed premises and do not increase the square footage of the area which constitutes the establishment;
3. Any addition exceeding ten percent of the existing floor area is made to the building or portion of a building occupied exclusively by a business which sells or serves alcoholic beverages and which would be subject to approval by conditional use permit, if being established as a new use;
4. Any modification, remodeling or renovation of an existing building, or portion thereof, occupied exclusively by a business or facility which sells or serves alcoholic beverages, when the value of such modification, remodeling, or renovation exceeds fifty percent of the replacement value of the subject premises as determined by the building official;
5. The establishment is found to be a public nuisance by the city council;
6. The California Department of Alcoholic Beverage Control has held a formal hearing regarding accusations of violations, by the establishment, of ABC rules and has determined that such violations have occurred.

M. Timely Compliance.

1. For all violations involving the unauthorized enlargement or physical modification to the existing building, facility or outdoor service area, timely compliance means complete removal of the physical modifications which constitute the violation or submittal of detailed working drawings sufficient for an application for building permit and a complete application for modification of the conditional use permit or zoning clearance which authorizes the business or facility. Evidence of the complete removal of unauthorized work, or the working drawings and complete application shall be filed in the office of the development services department within fifteen calendar days following the receipt of the development services director's notice and order by the owner, operator or employee-in-charge of the business or facility.
2. For all violations, other than those described in subsection L of this section, such as, but not limited to, the sale or display of unauthorized fortified wines, the display of unauthorized advertising signs, exceeding shelf area limitations; "timely compliance" means full compliance within twenty-four hours following receipt of the development services director's notice and order by the owner, operator or employee-in-charge of the business or facility. (Ord. 446 § 2, 2017)

## **18.27.040 General provisions.**

A. Alcoholic Beverage Sales or Service, New and Substantial Changes. Except as otherwise stated herein, on and after the effective date of the ordinance creating this chapter, no place, facility or business wherein alcoholic beverages are sold, served or given away for on-site or off-site consumption, shall be established or shall affect a “substantial change” in mode or character of operation as defined in Section 18.27.030(G) without first obtaining a conditional use permit, or modification of an existing conditional use permit, pursuant to Section 17.28.050 of the zoning ordinance. A zoning clearance shall be required if alcoholic beverage sales or services are “incidental” as defined in Section 18.27.030(B).

B. Alcoholic Beverage Sales or Service, Not Authorized by CUP or zoning clearance. Except for those places, businesses and facilities described in subsection A of this section as an establishment having a conditional use permit or zoning clearance and being in full or substantial compliance with current requirements, on and after the effective date of the ordinance creating this chapter, all existing places wherein alcoholic beverages are sold, served, or given away for on-site or off-site consumption shall be considered nonconforming uses. Elimination of nonconforming status may be achieved by filing the appropriate application, receiving a conditional use permit or zoning clearance as required by this chapter, and complying with conditions of approval which shall be limited to the minimum conditions of approval as set forth in Section 18.27.060(A) and (B). These requirements shall be enforced according to the provisions of subsection C of this section. For existing businesses selling alcoholic beverages, the requirements of this chapter relating to minimum separations between the existing business, similar establishments and other specific land uses shall be waived.

C. Alcoholic Beverage Sales or Service—Enforcement. The alcoholic beverage sales ordinance shall be enforced according to the provisions of Section 18.27.120 of the development code and Section 17.28.020 of the zoning ordinance. (Ord. 446 § 2, 2017; Ord. 386 § 3, 2009)

## **18.27.050 Findings.**

In addition to the findings required for the granting of conditional use permits by Section 17.28.050 of the zoning ordinance, the decision making authority shall consider the following:

A. Whether the proposed use will result in an undue concentration of establishments selling alcoholic beverages as defined by the state Alcoholic Beverage Control Department (ABC) or by city ordinance, resolution, or policy.

B. Whether the approval of the proposed use will violate the minimum requirements, set forth in this chapter, for distance separations between establishments which sell, serve or give away alcoholic beverages; and separations between establishments which sell, serve or give away alcoholic beverages and other specific land uses.

C. Whether the proposed use will be located in an area which, based on the most recent yearly compilation by the San Diego County sheriff's department or other appropriate law enforcement agency, has experienced a greater than average number of reported crimes and arrests, including those reported as alcohol-related, as well as, criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, motor vehicle theft combined with all arrests for other crimes, felonies and misdemeanors, except traffic citations. (Ord. 446 § 2, 2017; Ord. 386 § 3, 2009)

## **18.27.060 Minimum conditions of approval.**

A. Businesses or facilities providing alcoholic beverages for off-site consumption shall

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comply with the following minimum conditions of approval. However, the city council may impose such additional conditions and restrictions as found necessary or desirable to achieve the purposes of this chapter.

1. No alcoholic beverages shall be consumed on the premises under the control of the business owner or the property owner, excepting when alcoholic beverages are manufactured on the premises.
2. Adequate litter receptacles shall be provided.
3. All display of alcoholic beverages shall be located a minimum of five feet from the store entrance.
4. For establishments which sell or give away alcoholic beverages and also sell gasoline, no signs advertising alcoholic beverages may be visible from the exterior of the building. Except for liquor stores, the signage for which shall be governed by conditional use permit and the city sign ordinance, signage advertising alcoholic beverages for all other establishments selling alcoholic beverages for off-premises consumption shall be limited to no more than fifty percent of the temporary window display permitted by the sign ordinance (twelve and one-half percent of total window area). Not more than two neon signs which hang on the inside of a window may be permitted subject to, and deducted from, the area limitations established in this subsection. No reference to liquor, any alcoholic beverage or product, or alcoholic beverage brand name may be included in any permanent signage for any establishment selling alcoholic beverages for off-site consumption other than that displayed by liquor stores or alcoholic beverage manufacturers when they are on the premises.
5. No wine shall be displayed, sold or given away in containers of less than seven hundred ml, except multipack containers of wine and wine coolers containing no more than fifteen percent alcohol by volume.
6. No distilled spirits shall be displayed, sold or given away in containers of less than two hundred fifty ml, except two hundred ml pre-mixed cocktails.
7. The display, sale or distribution of fifty ml "airport bottles" and three hundred seventy-five ml "hip flask" containers is prohibited.
8. No single serve beer, ale or malt liquor shall be offered for sale in a container with a volume equal to or greater than thirty-two ounces, excepting off-sale alcoholic beverages from manufacturers on the premises. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings.
9. No wine with an alcoholic content greater than fifteen percent by volume shall be displayed, sold or given away unless the following conditions are met:
  - a. The alcohol content is solely the result of the natural fermentation process; or
  - b. If the alcohol content resulting from natural fermentation has been increased by the addition of wine spirits, brandy, or other alcohol, the wine must be sealed and capped by cork closure and aged for two or more years.
10. All litter shall be removed from the exterior areas around the building as required and no less frequently than once each day this business is open.
11. The operation of the business shall comply fully with all the rules, regulations and orders of the state Alcoholic Beverage Control Department. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit or zoning clearance.
12. The business shall comply with all of the conditions of the conditional use permit or zoning clearance which authorizes its operation.

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13. For all businesses other than liquor stores, brewpubs, wine bars, rectifiers and manufacturing, warehouse, and distribution facilities, the display, sale and distribution of alcoholic beverages shall be accessory to other permitted activities. Except where Section 18.27.030(B)(3) requires a greater limitation, shelving or other display area allocated to the display of alcoholic beverages shall not exceed ten percent of the total shelf or display area within the premises.

14. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.

15. No display, sale or distribution of beer or wine, wine coolers or similar alcoholic beverages shall be made from an ice tub or similar container.

16. Employees engaged in the sale or distribution of alcoholic beverages shall be at least twenty-one years old, or at least one salesperson twenty-one years old or older must be on the premises during all times when alcoholic beverages are sold.

17. Businesses engaged in the sale or distribution of alcoholic beverages for off-site consumption shall maintain a minimum separation of five hundred feet from any other business required to have a conditional use permit for the sale of alcoholic beverages. This subdivision shall not apply to incidental alcoholic beverage sales and warehouses, and distribution facilities.

B. Businesses providing the sale or service of alcoholic beverages for on-site consumption shall comply with the following minimum conditions of approval. However, the city council may impose such additional conditions and restrictions as are found necessary or desirable to achieve the purposes of this chapter.

1. Except within city-approved outdoor places which are adequately separated from direct public access via a fence or other means, no alcoholic beverages shall be consumed outside of an enclosed building.

2. For restaurants, bars, taverns and cocktail lounges, signs advertising alcoholic beverages shall be limited to no more than fifty percent of the temporary window display permitted by the sign ordinance (twelve and one-half percent of total window area). Not more than two neon signs which hang on the inside of a window may be permitted subject to, and deducted from, the area limitations established in this subsection.

3. Except for manufacturers, brewpubs, wine bars and rectifiers, no reference to liquor, any alcoholic beverage or product, or alcoholic beverage brand name may be included in any permanent signage for any establishment selling alcoholic beverages for on-site consumption other than that displayed by bars, taverns and cocktail lounges.

No wine with an alcoholic content greater than fifteen percent by volume shall be displayed, sold or served unless the following conditions are met:

a. The alcohol content is solely the result of the natural fermentation process; or

b. If the alcohol content resulting from natural fermentation has been increased by the addition of wine spirits, brandy, or other alcohol, the wine must be sealed and capped by cork closure and aged for two or more years.

4. All litter shall be removed from the exterior of the building as required and no less frequently than once each day the business is open.

5. The operation of the business or facility shall comply fully with all the rules, regulations and orders of the state Alcoholic Beverage Control Department. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit or zoning clearance.

6. For all businesses and other facilities engaged in the sale or service of alcoholic beverages for on-site consumption other than bars and taverns, the sale of alcoholic

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beverages shall be incidental and accessory to other permitted activities.

7. Employees engaged in the sale or service of alcoholic beverages for on-site consumption shall be at least twenty-one years old.

8. Except for incidental alcoholic beverage sales businesses, businesses engaged in the sale or service of alcoholic beverages for on-site consumption shall maintain a minimum separation of one thousand feet from another business selling or serving alcoholic beverages for on-site consumption and a minimum of five hundred feet from any other business requiring a conditional use permit for the on-site or off-site sale or service of alcoholic beverages; any church or other place of worship; any public or private preschool, elementary school or high school; any public park or playground; any hospital, clinic, or other health care facility; any residential unit other than a caretaker's dwelling on a commercial or industrial property; and any property zoned for residential use. Except that existing businesses that serve alcohol and that were located closer than five hundred feet or one thousand feet from another business serving alcohol prior to adoption of the ordinance codified in this chapter shall be allowed to expand their business as long as the expansion does not violate the distance requirements from any of the designated sensitive uses identified in this section above. Based upon the particular circumstances involved, the city council shall determine the appropriate separation between private clubs and lodges operated by recognized national, state or regional religious or fraternal order and appropriate distances between such clubs and lodges and other types of land use. (Ord. 446 § 2, 2017)

### **18.27.070 Measurement of distance.**

#### A. Types of Uses.

1. "Regulated uses" are those businesses and facilities which sell, serve or give away alcoholic beverages and which have been identified in Sections 18.27.060(A)(16) and 18.27.060(B)(8).

2. "Protected uses" are churches or other places of worship; any public or private preschool, elementary school or high school; any park or playground; any hospital, clinic, or other health care facility; any residential unit other than a caretaker's dwelling on a commercial or industrial property; and any property zoned for residential use.

#### B. Distance Computation.

1. When a physical separation is required between two regulated uses, the distance of such separation is measured along a straight line extending between the closest exterior structural walls of each use.

2. When a physical separation is required between a regulated use and a protected use, the distance of such separation is measured along a straight line extending between the closest exterior structural wall of the regulated use and the closest property line of the protected use. (Ord. 446 § 2, 2017)

### **18.27.080 Notification to alcoholic beverage control department.**

A. Within five days following the city's approval of a conditional use permit or zoning clearance for a business proposing to sell, serve or give away alcoholic beverages, the city will send a written notice of such approval to the local office of the State Alcoholic Beverage Control Department.

1. The notice shall include a copy of the resolution or notice of approval and will state that city approval of the business or other facility proposing to sell, serve or give away alcoholic beverages has been granted subject to compliance, by the business or facility,



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with certain specific conditions.

2. The notice shall indicate the final date for the filing of any appeals from the decision or conditions of approval.

3. The notice shall state clearly in its heading and text that formal city approval of the business or facility which proposes to sell, serve or give away alcoholic beverages will be withheld until the business has complied with all appropriate conditions of approval.

B. Within three working days of the city's determination that a business proposing to sell alcoholic beverages has fully complied with all appropriate conditions of approval of a conditional use permit or zoning clearance, a notice regarding such full compliance will be sent to the local ABC office. (Ord. 446 § 2, 2017)

### **18.27.090 Notification regarding violations.**

Each time the development services director determines that a business or other facility which sells, serves or gives away alcoholic beverages has violated any provision or condition of its conditional use permit, zoning clearance, other city law or regulation, or any requirement of the state Alcoholic Beverage Control Department, it shall issue a written notice and order to the owner of the business or facility. The notice and order shall include the following:

A. A requirement that the business owner or facility operator correct all violations immediately.

B. A statement that a violation of the alcoholic beverage sales ordinance constitutes a misdemeanor subject to the general penalty provisions of this code, that conviction of a misdemeanor shall be punishable by fine or imprisonment or both such fine and imprisonment, and that each day a violation is committed or continued constitutes a separate offense.

C. A statement that, in addition to the penalties stated in Section 18.27.080, failure to comply in a timely manner or repeated violations may result in a revocation of the conditional use permit or zoning clearance which authorizes the maintenance of an establishment selling, serving or giving away alcoholic beverages.

D. A notification that a written report of such violation or violations has been transmitted to both the owner of the property where the business or facility is being conducted or operated and to the local office of the Alcoholic Beverage Control Department. (Ord. 446 § 2, 2017)

### **18.27.100 Justification for revocation of approvals.**

Any business establishment which has been authorized by the city to sell, serve or give away alcoholic beverages shall comply fully with all city zoning and sign regulations, with all conditions attached to the approval of its conditional use permit or zoning clearance, and with all rules, regulations and orders of the State Alcoholic Beverage Control Department. Failure to comply with any of these requirements shall constitute grounds for revocation of a conditional use permit or zoning clearance. (Ord. 446 § 2, 2017)

### **18.27.110 Hearing regarding alleged violations.**

If a business or other facility which sells, serves or gives away alcoholic beverages has been declared a public nuisance; if it has been found, by the California Department of Alcoholic Beverage Control, to be in violation of ABC rules; if its owner or operator fails to comply or refuses to comply with a notice and order to correct a violation in a timely manner; or if the development services director, on three separate occasions within any twelve-month period has issued a written notice and order to the owner of said business or operator of the facility, pursuant to Section 18.27.080, requiring the correction of specific violations of its conditional

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use permit or zoning clearance, the city council will schedule a public hearing, consistent with the requirements of Section 17.28.020 of the zoning ordinance to consider these matters. Following such public hearing, the city council may make any findings which it believes to be supported by the facts presented in the hearing, including the following:

A. It may find that the alleged violation(s) did not occur, were beyond the control of the business owner or facility operator, or were insignificant.

B. It may find that the alleged violation(s) did occur, that they were the responsibility of the business owner or facility operator, and were significant. As part of its determination regarding the appropriate action to be taken, the city council may consider whether the violations were corrected immediately after being brought to the owner's or facility operator's attention, whether such violations constitute a minor or major violation of this chapter and its purpose and intent, and whether such violations appear to constitute a pattern of disregard for the city's laws and the standards of the community. (Ord. 446 § 2, 2017; Ord. 386 § 3, 2009)

### **18.27.120 City actions in response to violations.**

If, after a public hearing and full examination of the evidence regarding alleged violations of the city's regulations governing the sale, service or distribution of alcoholic beverages, the city council makes findings similar to those stated in Section 18.27.110(A) it may choose to take no action against the owner of the subject business or operator of the subject facility. However, if the evidence submitted in the public hearing convinces the city council that a significant violation has occurred, it may take one or more of the following actions:

A. Imposition of additional conditions governing the physical design of the building or property where the business is conducted or the facility is operated.

B. Attachment of additional conditions or limitations affecting the operations of the business or facility.

C. The city council may determine that the business or facility, and its manner of operation, constitutes a serious threat to the preservation of the public health, safety and welfare and may take one or both of the following actions:

1. It may revoke the conditional use permit or zoning clearance which authorizes the business or facility to sell, serve or give away alcoholic beverages.

2. It may recommend that the city council declare that the business or facility is a public nuisance subject to abatement or injunction in the manner provided by law. (Ord. 446 § 2, 2017)

## LGMC Chapter 18.28 – Adult Entertainment

### **18.28.010 Purpose.**

It is the purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of adult entertainment establishments, as defined in this chapter, within the city of Lemon Grove. These regulations are intended to prevent problems of blight and deterioration which accompany and are brought about by the concentration of adult entertainment establishments.

### **18.28.020 Definitions.**

The following words and phrases are specifically defined to apply to the regulations of this chapter. Where words are not defined here or elsewhere in the municipal code, their common meanings shall apply.

A. “Adult bookstore” means an establishment that devotes more than fifteen percent of the total floor area utilized for the display of books and periodicals to the display and sale of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specific sexual activities or specified anatomical areas; or
2. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than fifteen percent of the total floor area of the establishment to the sale of books and periodicals.

B. “Adult cabaret” means a nightclub, bar, theater, restaurant or similar establishment which regularly features live performances which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas and/or which regularly features films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

C. “Adult drive-in theater” means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

D. “Adult hotel or motel” means a hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

E. “Adult mini-motion picture theater” means an establishment, with a capacity of more than five but less than fifty persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

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F. "Adult model studio" means any establishment open to the public where, for any form of consideration or gratuity, figure models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the Education Code of the state of California for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

G. "Adult motion picture arcade" means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

H. "Adult motion picture theater" means an establishment, with a capacity of fifty or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

I. "Adult theater" means a theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

J. Anatomical areas. See "Specified anatomical areas" (Section 18.28.030(A)).

K. "Body painting studio" means any establishment or business which provides the services of applying paint or other substances, whether transparent or nontransparent to or on the human body when such body is wholly or partially nude in terms of specified anatomical areas.

L. Bookstore. See "Adult bookstore" and "General bookstore."

M. Cabaret. See "Adult cabaret."

N. "Church" means an institution which people regularly attend to participate in or hold religious services, meetings and other activities. The term "church" shall not carry a secular connotation, and shall include buildings in which the religious services of any denomination are held.

O. Drive-In Theater. See "Adult drive-in theater."

P. "General bookstore" means an establishment engaged in the buying, selling and/or trading of new and/or used books, manuscripts and periodicals of general interest. A general bookstore does not include an establishment that is encompassed by the definition of adult bookstore.

Q. "General motion picture theater" means a building or part of a building intended to be used for the specific purposes of presenting entertainment as defined herein, or displaying motion pictures, slides, or closed circuit television pictures before an individual or assemblage of persons, whether such assemblage be of a public, restricted or private nature, except a home or private dwelling; where no fee, by way of an admission charge, is charged; provided, however, that any such presentations are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical area in that any such depiction or description is only incidental to the plot or story line. A general motion picture

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theater does not include any establishment that is defined by adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, or adult drive-in theater.

R. “Legitimate or live theater” means a theater, concert hall, auditorium or similar establishment which, for any fee or consideration, regularly features live performances which are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas in that any such depiction or description is only incidental to the primary purpose of the performance.

S. “Massage parlor” means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state of California. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

T. Motion Picture Theater. See “General motion picture theater.”

U. Parlor. See “Massage parlor.”

V. “Public playground/park/recreational area” means an area to which the public and particularly children, come to participate in athletic or recreational activities whether or not such activities are supervised or organized. Such areas include, but are not limited to, publicly owned and maintained parks, community gardens, athletic fields, playgrounds, and picnic areas.

W. Rap parlor. See “Massage parlor.”

X. “School” means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

Y. “Sexual encounter establishment” means an establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or persons may congregate, associate or consort in connection with specified sexual activities or the exposure of specified anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state of California engages in sexual therapy. For the purposes of these regulations, sexual encounter establishment shall include massage or rap parlor or other similar establishments.

Z. Sexual activities. See “Specified sexual activities” (Section 18.28.030(B)). (Ord. 422, 2014)

### **18.28.030 Special phrases.**

The following expressions shall be interpreted according to the specific and detailed meanings provided.

A. “Specified anatomical areas” means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the aureole;  
or

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2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. "Specified sexual activities" means:

1. The fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts; or

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

3. Masturbation, actual or simulated; or

4. Excretory function as part of or in connection with any of the activities set forth in subsections (B)(1) through (3) of this section.

C. "Establishing an adult entertainment establishment" means:

1. The opening or commencement of any such establishment as a new establishment; or

2. The conversion of an existing establishment, whether or not an adult entertainment establishment, to any of the adult entertainment establishments defined herein; or

3. The addition of any of the adult entertainment establishments defined herein to any other existing adult entertainment establishment; or

4. The relocation of any such establishment.

D. "Transfer of ownership or control" means:

1. The sale, lease or sublease of such establishment; or

2. The transfer of securities which constitute a controlling interest in such establishment, whether by sale, exchange or similar means; or

3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of such establishment, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

### **18.28.040 Activities regulated.**

For the purpose of this chapter, the following activities as defined in this chapter shall be deemed adult entertainment: adult arcade; adult bookstore; adult cabaret; adult drive-in theater; adult mini-motion picture theater; adult model studio; adult motel; adult motion picture theater; adult theater; body painting studio; massage parlor; sexual encounter establishment; plus any other business which involves specified sexual activities or the display of specified anatomical areas.

### **18.28.050 Permitted locations.**

A. Zone. Adult entertainment establishments which are enumerated in Section 18.28.040 may be established only within the general commercial zone.

B. Site. No adult entertainment establishment shall be permitted within one thousand feet of another such business, within five hundred feet of any area zoned for residential use, or within six hundred feet of any church, school, public playground, park or recreational area.

### **18.28.060 Measure of distance.**

Distance without regard to intervening structures, shall be:

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- A. A straight line measured from the closest exterior structural wall of any two adult entertainment establishments.
- B. A straight line measured from the closest exterior structural wall of the adult entertainment establishment to the closest property line of a church, school, public playground, park, recreational area, or residential zone.

### **18.28.070 Permit.**

No person shall cause or permit the establishment, substantial enlargement or transfer of ownership or control of any adult entertainment establishment without first obtaining an administrative permit therefor pursuant to the administrative permit procedure from the chief of police for the city of Lemon Grove or other person or agency designated by the Lemon Grove city council as the administering agency. An application for such permit may be made where authorized by the applicable use regulations and shall be acted upon in accordance with the standards for location as specified in Section 18.28.050.

### **18.28.080 Development and maintenance standards.**

The premises of all adult entertainment businesses hereafter commenced shall, in addition to compliance with all other applicable requirements of the city of Lemon Grove zoning ordinance, be required to comply with the following specific requirements.

- A. Signs. Except for theater marquee signs, changeable copy signs, temporary signs and small permanent signs are not permitted. All signs shall be subject to review and approval by the planning commission.
- B. Exterior Painting. Buildings and structures shall not be painted or surfaced with garish colors or textures or any design that would simulate a sign or advertising message.
- C. Advertisements, displays of merchandise, signs, or any other exhibit depicting adult entertainment activities placed within the interior of buildings or premises shall be arranged or screened to prevent public viewing from outside such buildings or premises.
- D. No outdoor loudspeakers or other outdoor sound equipment advertising or directing attention to an adult entertainment use is allowed.
- E. Upon order of the city manager, graffiti appearing on any exterior surface of a building or premises, which graffiti is in public view, shall be removed and the surface shall be restored within seventy-two hours of notification to the owner or person in charge of the premises.

### **18.28.090 Exceptions.**

- A. A person possessing ownership or control of an adult entertainment establishment which does not comply with the standards for location pursuant to Section 18.28.050 on the effective date of the ordinance codified in this chapter, shall be permitted to transfer such ownership or control before January 1, 1983. The person acquiring such ownership or control, however, shall be required to discontinue the adult entertainment business within five years from the date of the transfer of ownership or control if such establishment does not comply with Section 18.28.050, Permitted locations.
- B. A person possessing ownership or control of an adult entertainment establishment which meets the standards for location as specified in Section 18.28.050, shall be subject to the provisions of subsection A of this section when a church, school, public playground, park or recreation area, as defined by this chapter is established within six hundred feet of such adult entertainment establishment. Two years shall be permitted to utilize the transfer provisions of subsection A of this section, beginning on the date on which the church, school, public

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playground, park or recreational area begins operation.